

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1153 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

MEMON JIKAR A SAKUR,RAJVANI

Versus

USMAN HAJI AHMED ZEDA

Appearance:

MR AJ MEMON for Petitioners
MR KB PADIA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. This is landlord's revision under Section 29(3)
of the Bombay Rent Control Act (for short "the Act")
against the Judgment and Decree of the Appellate Court
partly confirming the decree of the trial Court refusing
the decree for eviction to the landlord revisionist, but

modifying the decree of the trial Court refusing the decree for arrears of rent and granting decree for arrears of rent to the tune of Rs.637.50 ps.

2. Shri A.J.Memon for the revisionist and Shri B.D.Karia for the respondent - tenant have been heard. The Judgments of the two Courts below have also been examined.

3. Brief facts giving rise to this revision are as under :

According to the plaintiff - revisionist disputed portion was let ut to the defendant respondent on monthly rent of Rs.25/-. He paid rent to the landlord upto 31.7.1973. Thereafter he did not pay rent which fell due for a period of 24 months from 1.8.1973 to 31.8.1975. Notice of demand was served upon the respondent, but he did not comply the same. Consequently Suit for eviction of the respondent and recovery of arrears of rent, mesne profits, notice charges, municipal taxes, etc. was filed.

4. The Suit was resisted by the respondent on various grounds. The first ground was that co-owner of the property was not joined as plaintiff hence the Suit is defective. Agreed rent was also disputed. According to the respondent the agreed rent was Rs.10/- p.m. and the claim of the revisionist for rent at the rate of Rs.25/p.m. was said to be excessive rent. There was plea of the defendant that the standard rent should be fixed, but no application for fixation of standard rent was moved by him. On the other hand the landlord moved application for fixation of standard rent which was pending and was decided by the trial Court along with the Judgment. Service of notice was also denied. With these averments it was pleaded that the Suit be dismissed.

5. The trial court found that the Suit was bad for misjoinder of necessary parties; that the standard rent was fixed at Rs.25/- p.m.; that the defendant was not in arrears of rent for more than six months and that the plaintiff was not entitled to decree of possession. With these findings the entire suit was dismissed by the trial Court little realising that the arrears of rent were claimed by the plaintiff till date of the Suit and no satisfactory evidence was given by the defendant regarding payment of rent.

6. The landlord agitated the matter in Appeal. The Appellate Court confirmed the decree of the trial Court

refusing to pass decree for eviction of the defendant. The Appellate Court, however, passed a Decree for recovery of arrears of rent amounting to Rs.637.50 ps. Feeling aggrieved the landlords have now preferred this Revision.

7. After examining the two judgments I find that the two Courts below have rightly recorded the finding that the case of the revisionist could not be covered within the ambit of Section 12(3)(a) of the Act. As such the case could be covered under Section 12(3)(b) of the Act.

8. The tenant simply disputed the agreed rate of rent. An application was moved by the landlord for fixation of standard rent and in that application also the landlord pleaded that the standard rent should be fixed at Rs.25/- p.m. Ultimately the trial Court, while passing the decree, held that the standard rent should be Rs.25/- p.m. The trial Court, however, dismissed the suit because the dispute of standard rent was pending hence the tenant could not have known at what rate he was required to deposit the rent in Court. The Appellate Court observed that the trial Court committed error in not granting time to the tenant to pay arrears of rent within a time fixed by it after delivering the Judgment and on this basis alone the appellate Court confirmed refusal of decree for eviction passed by the trial Court.

9. Learned Counsel for the revisionist has contended that the tenant did not ask for fixation of standard rent or fixation of interim standard rent in the trial Court. If he was feeling aggrieved that the rate of rent was excessive he should have moved the application for fixation of standard rent within a month of receipt of notice of demand. That was not done by the tenant respondent. There is no finding of the trial Court that the agreed rate of rent was Rs.10/- p.m. and that it was on the lower side. Consequently it cannot be said that the tenant did not know what amount of rent was to be deposited by him. He did not care to deposit the rent even at the rate of Rs.10/- p.m. which according to him was agreed rent. More over after the standard rent was fixed by the trial Court at Rs.25/- p.m., the tenant was duty bound to deposit the entire arrears of rent upto the date of decree of the trial Court within a reasonable time of receiving notice of Appeal from the Appellate Court. That was also not done. The respondent appeared in the Appellate Court and thereafter also he neither deposited in the Appellate Court the entire decretal amount and cost of the Suit nor deposited any amount towards rent in the Appellate Court. There was no

deposit what to say of regular deposit of rent by the defendant in the Appellate Court. The entire judgment of the lower Appellate Court seems to be misdirected. The Judgment of the trial Court is equally misdirected. The Appellate Court has nowhere mentioned in its judgment that during pendency of the Appeal the tenant had deposited the entire arrears of rent at the rate of Rs.25/- p.m. and had continued to deposit rent regularly in the Appellate Court. In these state of affairs and the fact emerging from the Judgment of the Appellate Court it cannot be said that the tenant - defendant was entitled to protection of Section 12(3)(b) of the Act.

10. Shri Memon vehemently contended that even at the time of admission of Revision in this Court at least three dates were given for ascertaining whether any amount was deposited by the respondent in the lower Appellate Court, but no information was given nor any receipt was shown. The Revision was admitted on 28.11.1985. Shri Memon further contends that even thereafter nothing has been deposited by the defendant respondent either in this Court or in the Appellate Court. It is, therefore, clear from the record that in addition to arrears of rent amounting to Rs.637.50 ps. as existing on the date of institution of the Suit not a single paise has been deposited by the tenant in any of the two Courts below till date. In such state of affairs it is difficult to grant protection to the tenant respondent under Sec. 12(3)(b) of the Act. As observed earlier the case is not covered by Section 12(3)(a) of the Act.

11. The tenant could avail protection of Section 12(3)(b) of the Act only when it is established that he on the first date of hearing of the Suit or on or before such other date, as the Court may fix, pays or tenders in the court the standard rent or permitted increase then due and thereafter continues to pay or tender in Court regularly such rent and permitted increase till the Suit is finally decided and also pays cost of the Suit as directed by that Court. Obviously this compliance was not done by the respondent in the trial Court. An Appeal is continuation of the Suit and if Appeal was preferred the tenant respondent was obliged, not only to deposit the entire arrears of rent, but to go on tendering or paying to the landlord or depositing in Court regularly the rent and permitted increase till the Appeal was finally decided. In Appellate Court also no such compliance was made. Consequently the tenant is liable to be evicted and the view taken by the two Courts below is patently erroneous. Consequently the revision has to

be allowed.

12. The Revision is hereby allowed. The Judgment and Decree of the two Courts below are hereby set aside. The Suit of the plaintiff - appellant for eviction of the defendant respondent and for recovery of Rs.932.30 ps. as arrears of rent, house tax, notice expence, etc. is decreed. The plaintiff - appellant shall get mesne profits at the rate of Rs.25/- p.m. from the date of the Suit till actual delivery of possession of the tenanted accommodation by the respondent.

On the request of Shri B.D.Karia, learned Counsel for the respondent, the defendant - respondent is permitted to hand over vacant possession of the tenanted accommodation to the landlord revisionist on or before 1.4.2001. The respondent will file Undertaking in this Court within two months from today that he shall not handver, alienate or sub-let the Suit accommodation to anybody else and shall hand over vacant possession of the premises to the revisionist on or before 1.4.2001. The arrears of rent and mesne profits upto the date of this Judgment shall be paid by the respondent by 30.9.2000. Future mesne profits thereafter at the rate of rs.25/p.m. shall be paid every month to the revisionist on 7th day of each english calendar month till delivery of possession. Mesne profits from 1.8.1973 upto date shall be calculated and paid at the rate of Rs.25/- p.m. by the respondent. No order as to costs.

sd/-

Date : March 24, 2000 (D. C. Srivastava, J.)

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